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July 27, 2005

VIA HAND DELIVERY

Honorable John P. Lane
Supreme Court Justice
New York Supreme Court
25 Delaware Avenue
Buffalo, New York 14202

**Re: Warren v. Giambra, et al.
Index No. 2004-12768**

Dear Justice Lane:

During the July 18, 2005 status conference on this matter, Mr. Warren asked the Court to rule on the pending cross-motions for summary judgment prior to, and perhaps in lieu of, setting out a discovery scheduling order. He asked further that the Court consider, as a supplement to his summary judgment motion, the affidavit of Albert DeBenedetti, sworn to June 30, 2005. The Court granted both requests and directed the defendants to submit any additional papers responsive to this latest DeBenedetti Affidavit by July 27, 2005. Defendants have carefully reviewed this latest DeBenedetti Affidavit and hereby elect to rely on their previously filed May 31, 2005 memorandum of law for two reasons.

First, the most recent DeBenedetti Affidavit, much like the legislator's December affidavit, asserts only that two meetings were called, that said meetings were called to discuss issues related to the 2005 Erie County Budget and that a quorum was present for the meetings. Significantly, Mr. DeBenedetti does not aver that any particular matter was discussed, that any vote or other legal act was taken or that any consensus was reached on a given topic.

Second, Mr. Warren has failed to address the fact that, as set forth in the Fourth Affirmative Defense of Defendants' Verified Amended Answer to Verified Amended Complaint and referenced at page 4 of Defendants' May 31, 2005 brief, the allegedly violative meetings in 2005 were countenanced by Justice Joseph G. Makowski as part of the Court-ordered mediation process.

Thus, based on the authority and reasoning contained in Defendants' May 31, 2005 brief, it is clear that, even with the new DeBenedetti Affidavit, Mr. Warren has failed to demonstrate the prejudice required by New York courts to warrant the imposition of injunctive relief. Put another way, as this Court opined in its January 21, 2005 Order, "[i]n the absence of aggravating factors, the courts of New York do not routinely . . . impose sanctions for purely technical and non-prejudicial violations of the Open Meetings Law." *Id.* at 9. No such factors exist in this case.

For these reasons, the Defendants respectfully request that this Court deny the plaintiff's motion for summary judgment, grant the defendants' cross-motion for summary judgment and dismiss this case in its entirety.

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As always, if you have questions or if I can be of assistance, please contact me.

Very truly yours,

HARTER, SECRET & EMERY LLP

A handwritten signature in black ink, appearing to read "John G. Horn", with a large, stylized flourish at the end.

John G. Horn

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JGH
Enclosure

cc: Daniel T. Warren (via email)